



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 16, 1996

Ms. Jennifer Soldano
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR96-1672

Dear Ms. Soldano:

On behalf of Williams Brothers Construction Company, Inc. ("Williams Brothers"), you ask us to reconsider Open Records Letter No. 96-0997 (1996). Your request for reconsideration was assigned ID# 100712.

The Texas Department of Transportation (the "department") received a request for "copies of any reports, memoranda, documents and/or correspondence from Neilson-Wurster Group of Princeton, New Jersey concerning the [Houston Ship Channel Bridge] Project." You claimed that the requested documents contain proprietary information of Williams Brothers that is excepted from disclosure under section 552.110 of the Government Code. Pursuant to section 552.305 of the Government Code, we notified Williams Brothers of the request for information and of its opportunity to submit written comments explaining why the requested information should be excepted from disclosure. Williams Brothers did not respond.

In Open Records Letter No. 96-0997 (1996), we concluded that neither the department nor Williams Brothers established that any of the requested information is excepted from disclosure under either the trade secret prong or the commercial or financial information prong of section 552.110. On behalf of Williams Brothers, you ask us to reconsider that conclusion.¹ You have resubmitted to this office a representative sample of the requested information.² We note, however,

¹In Open Records Letter No. 96-0997 (1996), we also concluded that none of the requested information is excepted from disclosure pursuant to section 552.107 of the Government Code. You have not asked us to reconsider that conclusion.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those

that the sample includes an excerpt from the "Request for Equitable Adjustment," a document that Williams Brothers created and submitted to the department. The requestor seeks only documents that the Neilson-Wurster Group submitted to the department. We do not believe that the "Request for Equitable Adjustment" is responsive to the requestor's inquiry. Thus, we do not address the issue of whether this document is excepted from disclosure under section 552.110. We must, however, consider whether information taken from the "Request for Equitable Adjustment" and incorporated into documents created by the Neilson-Wurster Group is excepted from disclosure under section 552.110.

Williams Brothers requests that in the process of reconsidering whether the information at issue is excepted from disclosure under section 552.110, we consider the section 552.110 arguments that it submitted in connection with two related requests for decisions. We have considered those arguments and conclude that the submitted information that is responsive to the request for information is not excepted from disclosure under section 552.110.

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors. RESTATEMENT OF TORTS § 757

(Footnote continued)

cmt. b (1939).³ This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a prima facie case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5-6.

We do not believe that any of the information contained in the documents that the Neilson-Wurster Group submitted to the department constitutes trade secrets of Williams Brothers. The information relating to Williams Brothers' handling of the project does not fall within the Restatement's definition of trade secret. Thus, the information is not excepted from disclosure under the trade secret prong of section 552.110.

In connection with the department's two related requests for decisions, Williams Brothers also argues that its "pre-qualification financial information" is excepted from disclosure under the commercial or financial information prong of section 552.110. The information at issue here does not appear to include any "pre-qualification financial information." Therefore, we need not address Williams Brothers' arguments regarding the commercial or financial information prong of section 552.110.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

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³The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Ref: ID# 100712

Enclosures: Submitted documents

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(w/o enclosures)